

Members

Rep. Jonathan Weinzapfel, Chairperson
Rep. Ed Mahern
Rep. Ralph Foley
Sen. Joseph Zakas
Sen. Connie Lawson
Sen. Rose Ann Antich
Mr. James W. Martin
Ms. Cynthia Boll
Mr. Vincent Heiny
Mr. Robert Christopher
Ms. Janet Ellis
Mr. Terry Harris
Ms. Diane Bender
Mr. John Chappell
Mr. William Holwager



PROBATE CODE STUDY COMMISSION

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MEETING MINUTES¹

Meeting Date: September 25, 2000
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Jonathan Weinzapfel, Chair; Rep. Ralph Foley; Sen. Joseph Zakas; Sen. Connie Lawson; Sen. Rose Ann Antich; Mr. James W. Martin; Ms. Cynthia Boll; Mr. Vincent Heiny; Mr. Robert Christopher; Ms. Janet Ellis; Mr. Terry Harris; Mr. William Holwager.

Members Absent: Rep. Ed Mahern; Ms. Diane Bender; Mr. John Chappell.

Rep. Weinzapfel, Chair of the Commission, called the meeting to order at 1:20 p.m. Chair Weinzapfel asked Jim Martin, Commission member to describe the preliminary drafts to be considered by the Commission.

Discussion of Preliminary Drafts

PD 3095 Applicability of the dead man's statute. Mr. Martin explained that this proposal would result in the dead man's statute not applying to: 1) a proceeding to contest the validity of a will or a trust, and 2) to a custodian or other qualified witness to the extent that the witness seeks to introduce evidence admissible under the hearsay exception for records of a regularly conducted business activity. After discussion, it was decided to include language which would clarify that this proposal would apply to decedents dying after June 30, 2001.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

The Commission agreed to have a bill prepared for introduction in the 2001 session of the General Assembly by a vote of 11-0.

PD 3096 Power of attorney accounting. This draft would allow a court to order an attorney-in-fact to render a written accounting. Mr. Jeff Kolb provided language prepared by the Probate Trust and Real Property Section of the Indiana State Bar Association which would strengthen penalties for persons refusing to accept the authority of an attorney-in-fact. (Exhibit 1). It was suggested that this language be added to PD 3096.

Mr. Martin explained that in situations where certain companies refuse to accept a power of attorney unless it had been executed within 60 days, this suggested language would provide leverage in those situations.

The Commission agreed to have a bill prepared for introduction in the 2001 session of the General Assembly, including the language provided by Mr. Kolb, by a vote of 10-0, with one abstention.

PD 3218 (PD 3097 from previous meeting) Inheritance tax affidavit. This proposal is designed to speed up the probate process. PD 3218 includes a drafting change by deleting Section 3 of PD 3097 as directed by the Commission at the last meeting. Anne Haley, attorney for the Commission, had made the change.

The Commission agreed to have a bill prepared for introduction in the 2001 session of General Assembly by a vote of 11-0.

PD 3098 Inheritance, estate, and transfer tax due dates. This is a proposal which the Commission has been considering for a number years. It is designed to speed up estate administration. It changes the due date for inheritance tax, estate tax, and generation-skipping tax from 18 months to 12 months after the date of death. It also changes the due date for return filing and payment of inheritance tax from 12 months to 9 months.

The Commission agreed to have a bill prepared for introduction in the 2001 session of the General Assembly by a vote of 11-0.

PD 3219 (PD 3099 from previous meeting) Construction of nonprobate transfers. This proposal would add rules of construction similar to those found in the Probate Code to the Trust Code. It also includes a drafting change made by Ms. Haley which was requested at the previous meeting.

The Commission agreed to have a bill prepared for introduction in the 2001 session of the General Assembly by a vote of 11-0.

PD 3100 Various probate and trust matters. Mr. Martin described the key changes which would result from the adoption of this proposal: 1) It increases the allowance that a surviving spouse is entitled to receive from a decedent's estate from \$15,000 to \$25,000, 2) It specifies that when there is no conflict of interest between the guardian of the estate of a protected person and the protected person, an order binding the guardian of the estate binds the protected person, and 3) It increases from \$5,000 to

\$10,000 the maximum amount of debt owed to a minor and the maximum value of property belonging to a minor that may be paid or delivered to a person having the care and custody of the minor without giving a bond or an order of the court.

After discussion, it was proposed to amend the draft to increase the maximum debt amount for incapacitated individuals as well as minors to \$10,000.

The Commission agreed to have a bill, as amended, prepared for introduction in the 2001 session of the General Assembly by a vote of 11-0.

PD 3101 Probate notices and hearings. This proposal would eliminate certain notice requirements related to estates. Responding to a question from Sen. Lawson, Mr. Martin said that he did not believe that these changes would cause a burden to county clerks.

The Commission agreed to have a bill prepared for introduction in the 2001 session of the General Assembly by a vote of 11-0.

PD 3104 Investments by fiduciaries. This proposal would remove the 25% limit on a trustee's investments in life insurance contracts from trust income. The proposal would make expenditures subject to limitations imposed by the probate court or authorized by the trust instruments.

The Commission agreed to have a bill prepared for introduction in the 2001 session of the General Assembly by a vote of 11-0.

PD 3106 Various Probate Matters. This proposal reduces the time for giving notice to creditors from three months to one month. It is designed to speed up estate administration.

The Commission agreed to have a bill prepared for introduction in the 2001 session of the General Assembly by a vote of 10-0.

PD 3107 Valuation for inheritance tax purposes. This proposal provides that the finally determined federal estate tax value of a property tax interest is presumed to be the fair market value of the property interest for Indiana inheritance tax purposes. In response to a question from William Holwager, Commission member, Jim Mundt, fiscal analyst for the Commission said that the fiscal impact of this proposal was believed to be minimal. Mr. Holwager that this change would result in additional complexity for estate administration, and would only impact a very small number of taxpayers. It would also require a decision by the Department of Revenue as to what level of compliance administration would be required. Bill Reynolds, representing the Department of Revenue, said he felt any additional authority to enforce compliance would require a statutory change. Rep. Foley stated that he agreed with the points made by Mr. Holwager. He also said he would like to see a total repeal of the inheritance tax.

The Commission agreed to have a bill prepared for introduction in the 2001 session of the General Assembly by a vote of 9-1.

PD 3217 (3108 from previous meeting) Inheritance tax deduction for family business.

This proposal would allow a deduction from the value of property interests transferred by a resident decedent equal to the amount of the decedent's interest in a qualified family owned business deducted from the decedent's gross estate for federal estate tax purposes under Section 2057 of the Internal Revenue Code. Mr. Holwager pointed out that in light of the fiscal impact statement which stated this provision would apply to 64 to 72 estates with an annual revenue loss of about \$ 1 million, the effect of the bill would be to give tax relieve of about \$14,000 per estate for about 70 estates.

The Commission agreed to have a bill prepared for introduction in the 2001 session of the General Assembly by a vote of 9-1, with one abstention.

Repeal of Inheritance Tax

Sen. Zakas moved that the Commission make a statement in principle that the Indiana inheritance tax should be repealed. This would not be in the form of a bill draft, but would make a record of the statement of the Commission.

The Commission adopted the motion by a vote of 10-0.

SB 463-99

This proposal would have provided that for purposes of the inheritance tax, a stepchild of the transferor is a Class A transferee. Rep. Foley stated that in some cases of blended families, there can be an inequity in the treatment of stepchildren who do not meet the statutory in loco parentis requirement. Commission member Terry Harris pointed out that the passage of this bill would eliminate the inequity problem created by the current stature which arbitrarily creates a problem.

Following further discussion by Mr. Martin and Ms. Ellis, the Commission adopted a motion made by Sen. Zakas which calls for the Commission to endorse the concept of the language found in SB 463-99, but without authorizing a bill draft, by a vote of 9-0.

SB 413-99

This proposal would adopt the Uniform Principal and Income Act. Mary Marsh, representing National City Bank stated that the Act is not necessary because current statutes are clear, and the adoption of this Act could result in some trust accounts moving to other states.

Mr. Kolb stated that the language in this Act was drafted by the same entity that drafted existing law and that the intent of the Act is to bring the language up to date. He said that Indiana's Act is not unique when compared to other states, but does need to be updated. Mr. Kolb and Mr. Jewell of Renaissance, Inc. have drafted language which would make changes to the Act.

Legislative Strategy

Chair Weinzapfel indicated that the bill drafts which have been approved for introduction by the Commission will be packaged in such a way that those without a fiscal impact will be included in an omnibus bill and those with a fiscal impact will be

introduced separately.

There being no further business to come before the Commission, the meeting was adjourned at 3:00 P.M.